

REMARKS/ARGUMENTS

Favorable reconsideration of this application, as presently amended and in light of the following discussion is respectfully requested.

Claims 1, 3-5 and 47-50 are pending in the application, Claims 6-46 having been previously withdrawn. Claims 1 and 5 are amended; and Claim 2 is canceled by the present amendment. Support for amended Claims 1 and 5 can be found in the original specification, claims and drawings.¹ Thus, no new matter is presented.

In the outstanding Official Action, Claim 5 was rejected under 35 U.S.C. § 112, second paragraph, as indefinite; and Claims 1-5 and 47-50 were rejected under 35 U.S.C. § 102(e) as anticipated by Spagna et al. (U.S. Patent No. 6,587,837 B1, hereinafter "Spagna").

Claim 5 was rejected under 35 U.S.C. § 112, second paragraph, as indefinite, because the outstanding Official Action asserts that the word "frequency" is relative. In response, Claim 5 is amended to recite that the server receives the appreciation records including said number of times of reproduction of said music information at "regular intervals" instead of "a frequency". Support for this feature can be found, for example at p. 11, lines 1-3 of the specification, which describes that the appreciation records are iteratively transmitted at predetermined time intervals.

Accordingly, Applicant respectfully requests that the rejection of Claim 5 under 35 U.S.C. § 112, second paragraph, be withdrawn.

Independent Claim 1 was rejected under 35 U.S.C. § 102(e) as anticipated by Spagna. Applicant respectfully submits that amended independent Claim 1 states novel features not taught or rendered obvious by the applied reference.

Specifically, amended independent Claim 1 recites, *inter alia*, a music distribution method, comprising:

¹ E.g., specification, p. 11, line 11-p. 12, line 19.

registering a music reproduction apparatus specified by a listener who pays a fixed membership fee...

receiving by said server through said communication medium appreciation records including a number of times of reproduction with attribution of said music information reproduced by said music reproduction apparatus; and

distributing a payment to a copyright holder who holds a copyright of music information, in accordance with the appreciation records, the payment being drawn from the membership fee paid by the listener.

Turning to the applied reference, Spagna relates to a method for permitting an electronic delivery of digital content.² The digital content may distributed electronically via a web interface and include content such as print media, films, games, programs, television, multimedia, and music.³ The distributed content includes a license based usage control function that controls content usage according to the conditions of purchase or license, such as permitted number of copies, number of plays, and the time interval or term the license may be valid.⁴ Spagna's system also includes a secure digital content electronic distribution system (100), which facilitates customer transactions between a electronic digital content store (103) and intermediate market partners while providing a content provider (101) a level of assurance that their digital assets are protected and metered so that they can receive appropriate compensation for the licensing of content (113).⁵

However, Spagna fails to teach or suggest various features recited in amended independent Claim 1.

Specifically, amended independent Claim 1 recites ***registering a music reproduction apparatus specified by a listener who pays a fixed membership fee***. As described a col. 11, lines 25-35, Spagna's system includes a metering function that tracks all individual transactions and predetermined parameters associated with each transaction, including payment information. However, at no point does Spagna teach or suggest that a specific

² Spagna, Abstract.

³ Id

⁴ Id., col. 10, lines 22-24.

⁵ Id., col. 15, lines 44-51.

music reproduction apparatus is *registered as specified by a listener*, instead the reference simply describes that the “player application” includes the tools necessary to retrieve and play content, and that a license may be associated with each received piece of content. No registration step is described in Spagna.

Further, Spagna fails to teach or suggest that *a listener pays a fixed membership fee*, in his system. Instead, Spagna’s system describes that each download of content is billed based on the price of the retrieved content, and that the clearinghouse (105) then bills the user appropriately.⁶ Thus, the listener in Spagna does not *register* their device or *pay a fixed membership fee*, as recited in amended Claim 1.

Amended independent Claim 1 also recites distributing a payment to a copyright holder who holds a copyright of music information, *in accordance with the appreciation records, the payment being drawn from the membership fee paid by the listener*. As noted above, Spagna fails to teach or suggest that a listener *pays a fixed membership fee*, whatsoever. Accordingly, Spagna also fails to teach or suggest paying a copyright holder *in accordance with the appreciation records, the payment being drawn from the membership fee paid by the listener*.

Therefore, Applicant respectfully requests that the rejection of Claim 1 under 35 U.S.C. § 102 be withdrawn. As Claims 3-5 and 47-50 depend from amended Claim 1, it is submitted that these claim also patentably define over Spagna.

⁶ Id., col. 14, lines 1-47

Consequently, in view of the present amendment and in light of the foregoing comments, it is respectfully submitted that the invention defined by Claims 1, 3-5 and 47-50 is patentably distinguishing over the applied references. The present application is therefore believed to be in condition for formal allowance and an early and favorable consideration of the application is therefore requested.

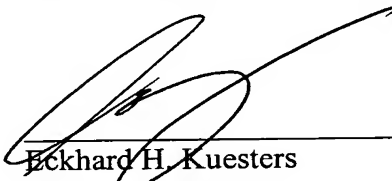
Respectfully submitted,

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